IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.1031 of 2005

in

NOTICE OF MOTION NO.3255 OF 2005

in

SUIT NO.1796 OF 2005

Chheda Housing Devdopment Corpn .. Appellant

versus

Bibijan Shaikh Farid & ors .. Respondents

...

Mr.Virendra Tulzapurkar a/w Mr.F.E.D'vitre, Mr.Virag Tulzapurkar and Mr.H.S.S.Murthy i/b M/s.P.M. Mithi & Co. for the appellant.

Mr.Rohit Kapadia a/w Mr.Nitin Thakkar i/b M/s.Vinod Mistry & Co. for the respondent no.10.

Mr.A.Y.Bookwalla i/b M/s.Ranjit & Co. for the respondent no.11.

Mr. Janak Dwarkadas i.b Mr.Sandesh Kondwilkar for the respondent nos.12 and 13.

Mr.P.J. Ramchandani a/w Mr.Y.M. Abrahani for the respondent nos.1 to 9.

Mr.H.C. Pimple a/w Mr.R.V. Sirsekar for the respondent no.14 - BMC.

CORAM : R.M. LODHA AND
D.G. KARNIK, JJ
DATED : 16th December 2005.

P.C.:

1. Heard Dr. Virendra Tulzapurkar, the learned counsel for the appellant and Mr.Janak Dwarkadas, the learned Senior counsel for the respondent nos.12 and 13.

2. The interim relief that was prayed by the plaintiff (appellant herein) in Notice of Motion no.3255 of 2005 related to right of way. The same interim relief was also prayed by the plaintiff in earlier Notice of Motion no.1915 of 2005 along with other reliefs. Interim relief for the right of way was not granted by the learned Motion Judge vide order dated 1st September 2005 and so also some other reliefs sought for by the plaintiff. Aggrieved by the order dated 1st September 2005 to the extent the relief prayed for by the original plaintiff was not granted, the appellant has preferred the appeal in Appeal No.1081 of 2005 and that appeal has been admitted by us today.

3. In view of the earlier Notice of Motion No.

1915 of 2005, interalia, for the same relief pertaining to right of way, the Notice of Motion no.3255 of 2005 taken out by the plaintiff was uncalled for. The learned Senior Counsel for the appellant submitted that necessity of taking out fresh notice of motion arose in view of the events that took place subsequent to the disposal of earlier notice of motion. We are not impressed by the submission. The interim prayer with regard to the right of way being subject matter of Appeal No.1081 of 2005, we are satisfied that no interference is called for in the impugned order.

4. Appeal is dismissed in limine.

(R.M. LODHA, J)

(D.G. KARNIK, J)